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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

IRMGARD SANTOS

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above-entitled case May 4, 1960.

CITATIONS TO OPINIONS BELOW

The findings of fact and opinion of the Court of Claims are reported at 277 F. (2d) 806, 5 AFTR (2d) 1383, and appears in the Appendix hereto, p.

JURISDICTION

The judgment of the Court of Claims was entered May 4, 1960. Petition for Rehearing was denied by the Court of Claims on July 15, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

STATEMENT

The facts are fully and fairly stated in the findings of fact of the Court of Claims which appear in the appendix hereto at page 5a. Summarized, the pertinent facts are:

During the period April 15, 1948 to September 18, 1950, petitioner's husband, Lawrence Santos, purchased and gave to the petitioner several cashier's checks in the total amount of $82,272.67, payable to "Lawrence Santos and or Irmgard Santos." On November 22, 1950, Lawrence Santos received the checks from petitioner and with the proceeds purchased for $81,674.32 Treasury bearer bonds in the face amount of $80,000.00.

At the end of each year from December 31, 1947 to December 31, 1952, Lawrence Santos had assets of from $205,813.93 to $237,302.02. (27 T.C. 571, 576.) The first deficiency assessment against Lawrence Santos for 1943 to 1946, inclusive, was made on December 26, 1951.

One $10,000 bond was sold on April 1, 1952 and the proceeds were used to pay the territorial taxes of petitioner and her husband.

On March 27, 1952, bonds in the principal amount of $70,000 were sold and the proceeds $68,287.90 paid on April 3, 1952 to the Collector of Internal Revenue in payment of individual taxes asserted against petitioner for 1943 to 1947. On April 4, 1952, a certificate of discharge of tax liens against petitioner for the years 1943 to 1947, inclusive, was issued by the Collector of Internal Revenue and duly recorded (App. 7a).

The Commissioner of Internal Revenue, on October 15, 1952, made a jeopardy assessment against petitioner

on the ground that she was a transferee of the assets of her husband, Lawrence Santos, on account of income taxes owed by Lawrence Santos for 1943 to 1946, inclusive. The said jeopardy assessment was in the principal amount of $68,287.90, plus interest of $26,605.15.

In a proceeding in the Tax Court involving petitioner's individual tax liability, *Irmgard Santos* v. *Commissioner*, Docket No. 42682, the Tax Court entered an order on August 10, 1954, pursuant to a stipulation of the parties, that there were overpayments of Irmgard Santos' individual income taxes for 1945 and 1946 in the principal amounts of $24,768.51 and $38,237.18, respectively.

On December 30, 1954, while the transferee case was pending in the Tax Court, the District Director of Internal Revenue at Honolulu credited the overpayments referred to in the preceding paragraph against the jeopardy assessment of the alleged transferee liability.

In 1956 the Tax Court affirmed the action of the Commissioner in asserting the transferee liability. 26 T.C. 571. The Ninth Circuit on June 28, 1957 reversed the Tax Court, 246 F. (2d) 204, with respect to the transferee liability.

On August 7, 1957, after the Ninth Circuit reversed the Tax Court in the transferee case, the District Director reversed on his books the credits he had previously made on account of the petitioner's alleged transferee liability. The said credits, totaling $77,118.47 were then applied by the District Director as a credit against the income tax liability of petitioner's husband, Lawrence Santos, for 1945. This was done although the Commissioner of Internal Revenue, in Docket No.

42682, which involved the year 1945, did not claim petitioner was liable for her husband's 1945 tax liability. As previously stated, the Commissioner lost the transferee case for 1945, in which he contended the petitioner was liable as transferee of her husband, on account of her husband's taxes for 1943 to 1946, inclusive. The decisions in both cases had become "final." The credit to the husband's account was made with no notice of any kind to the petitioner, and she was never given the opportunity of contesting the correctness of the credit.

The Tax Court on August 28, 1957 entered an order in the transferee case that, due to the reversal of the credits as mentioned above, there was no overpayment of transferee liability as of that date in the transferee case. The petitioner appealed that decision to the Ninth Circuit which, on August 8, 1958, held that it had no power to order the refund. 260 F. (2d) 583. The decision of the Tax Court in the transferee case as reversed by the Ninth Circuit and the decision in petitioner's individual case, Docket No. 42682, became "final" as provided in § 7481 of the Internal Revenue Code of 1954.

Petitioner then sued in the Court of Claims for the recovery of the overpayments determined in Docket No. 42682. The Court of Claims considered the merits of the cases already decided in the "final" Tax Court decisions and dismissed the petition without any discussion of the provisions of the Internal Revenue Code that:

(a) decisions of the Tax Court which have become final determine a taxpayer's liability for payment,

(b) any claim of the Commissioner or the taxpayer respecting liability for a particular year must be raised in the Tax Court proceeding, and

(c) that a liability cannot be collected unless the Commissioner of Internal Revenue issues a notice of deficiency and gives the taxpayer the opportunity of appealing to the Tax Court.

The Court of Claims did not cite any Court cases or any provision of the Internal Revenue Code in support of its position. It held that under the Hawaiian community property law petitioner's overpayment of $77,118.47 could properly be applied as a credit on the husband's liability for 1945, although petitioner's share of the community income for 1945 was only $15,621.92 (App. 4a).

QUESTIONS PRESENTED

1. The Commissioner of Internal Revenue proceeded against the taxpayer individually for additional taxes for 1943 to 1947 and against her as transferee of her husband on account of the husband's taxes for 1943 to 1946. Was the Commissioner of Internal Revenue required to make his entire claim for taxes or liability against the petitioner in the Tax Court? Or, after the Tax Court decisions became "final", did the Court of Claims err in holding that the Commissioner of Internal Revenue may apply an overpayment determined by the Tax Court against the tax liability of petitioner's husband where no claim was made in the Tax Court with respect to this liability?

2. The Tax Court in a decision which has become "final" determined that the petitioner had overpaid her tax. Did the Court of Claims err in refusing to

grant judgment for the amount of the overpayment because the Commissioner of Internal Revenue credited the said overpayments to the taxpayer's husband's liability without notice to the taxpayer?

3. Did the Court of Claims err in refusing to give judgment for a refund of taxes collected in a situation where the Commissioner of Internal Revenue has not issued a notice of deficiency as provided by § 6212 of the Internal Revenue Code?

REASONS FOR GRANTING THE WRIT

I.

The decision below that the Commissioner may collect a tax by credit despite "final" Tax Court decisions is in conflict with *Old Colony Trust Co.* v. *Commissioner*, 279 U.S. 716, in which this Court states:

> "By § 1005, the decision of the Board is to become final in respect to all the numerous instances which in the course of the review may naturally end further litigation . . . The complete purpose of Congress to provide a final adjudication in such proceedings, binding all the parties, is manifest, and demonstrates the unsoundness of the objection."[1]

Merten's Law of Federal Income Taxation, § 50.02, quotes *Lehigh Valley Trust Co.* v. *U.S.* (D.C. Pa., 1939), 34 F. Supp. 839, 25 AFTR 876 in holding "that final decisions of the Tax Court are conclusive on all matters between the parties not only upon things actually litigated, but also those which might have been litigated, . . ." This is "consonant with the great remedial

[1] § 272 of the 1939 Code and § 7481 of the 1954 Code are to the same effect.

purposes of the legislation creating the Board of Tax Appeals." *Helvering* v. *Taylor*, 293 U.S. 506, 516.

The Commissioner had the opportunity to contend in petitioner's individual case, Docket No. 42682, that no refund was due the petitioner for 1945 and 1946. Instead, he stipulated that the refund was due. After having so stipulated, he refused to make the refund.

That the action below is erroneous is clearly shown by the legislative history of the Board of Tax Appeals, now the Tax Court.

The Congress, in 1924, created the Board of Tax Appeals so that a taxpayer could have his liability determined prior to the payment of an additional assessment.[2]

The 1926 Act amended the 1924 Act by providing for appeals from the Board of Tax Appeals to Courts of Appeals. The Ways and Means Committee Report on the 1926 Act says in part:

> "Subdivision (f) provides that . . . after the commissioner has notified that taxpayer of the deficiency, he shall have no right to determine an additional deficiency in respect of the same taxable year, . . . Under this section, if the Commissioner has sent a 60-day letter * * * he may not thereafter send another 60-day letter, but must raise before the board * * * his claim for a deficiency greater than that set out in the 60 day letter."[3]

The Finance Committee Report on the 1926 Act shows the clear intention of making Board of Tax Appeals' decisions final. It states:

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[2] H.R. Report No. 179, 68th Congress, 1st Session, p. 7.

[3] H.R. Report, No. 1, 69th Congress, 1st Session, p. 10.

"The bill provides in section 274(a) that except in certain enumerated cases the commissioner can take no action to assess and collect a deficiency until he has mailed to the taxpayer a notice of the deficiency, and if the taxpayer has taken the case to the board, until the decision of the board has become final. Such decision becomes final: (1) on the expiration of the time allowed for appealing to the circuit court of appeals, or (2) where such an appeal has been taken, when the appellate courts have disposed of the case. The bill, therefore, contains in section 274(a) a provision that despite section 3224 of the Revised Statutes (which prohibits injunctions to restrain the assessment or collection of the tax) the taxpayer may in a proper case go into court for an injunction to restrain the commissioner from assessing or collecting a deficiency until the procedure outlined in the bill has been completed.

"It is the purpose of the bill that all questions arising prior to the time the decision of the board has been rendered as to the right of the commissioner to assess and collect the tax, including the question as to whether or not the statute of limitations has run before the mailing of the deficiency letter, shall be determined by the board, and by the courts on appeal from the board."[4]

This Court has had recent occasion to examine the history and purpose of the Tax Court in *Flora* v. *United States*, 362 U.S. 145, 5 AFTR (2d) 1044.

II.

The decision below is in conflict with the decision of the Tenth Circuit in *Owen* v. *United States* (1949) 177 F. (2d) 692, 38 AFTR 832. The Tenth Circuit

[4] Senate Report No. 52, 69th Congress, 1st Session, p. 26.

held that a decision of the Tax Court, affirmed by a Court of Appeals, is binding with respect to the merits in a subsequent suit by the United States to collect the deficiency.

In the case at bar, because the Tax Court decisions were final, the Court of Claims had no power to consider the case on the merits. The Ninth Circuit reversed the Tax Court on the only issue before the Tax Court regarding petitioner's liability to pay her husband's tax liability. The statute is plain that after a Tax Court decision becomes final, the Commissioner is prohibited from issuing further notices of deficiency.[5]

The Tax Court in petitioner's individual case, Docket No. 42682, determined overpayments were due her. There is no authority in tax law to do anything with those payments but to refund them.

III.

The decision below is in conflict with the decision of the Sixth Circuit in *United States* v. *Stock Yards Bank of Louisville* (1956) 231 F. (2d) 628, 49 AFTR 486. In that case, the Government sought to secure savings bonds issued in the name of husband and wife as co-owners. Mr. Justice Stewart speaking for the Sixth

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[5] § 6212(c), 1954 Code: "Further Deficiency Letters Restricted.

"(1) General Rule. If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, * * *, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), or section 6213(b)(1) (relating to mathematical errors), or in section 6861(c) (relating to the making of jeopardy assignments)." § 272(f), 1939 Code is to the same effect.

Circuit held that the Government should bring an action to enforce its lien, and name husband and wife as co-defendants. In that manner, the respective rights of the spouses could be determined.

We are here complaining that the Government failed to follow the statute and has collected the overpayments without giving the taxpayer the opportunity of showing that she was not liable for her husband's taxes.

IV.

The decision below is in conflict with the decision of the Third Circuit in *Raffalle* v. *Granger* (1952), 196 F. (2d) 620, 41 AFTR 1222. In that case, the Collector sought to satisfy the tax liability of the husband by distraining on the bank account in the name of a husband and wife "as tenants by the entireties." The Third Circuit states (p. 623):

> "The United States has no power to take property from one person, the innocent spouse, to satisfy the obligation of another, the delinquent spouse."

The rule just stated was recognized as early as 1921 by the Treasury Department in O. D. 1096, C. B. Dec. 1921, p. 239, as follows:

> "The property of one spouse is not subject to distraint to enforce payment of an income tax obligation of the other spouse unless there has been a transfer of property from one spouse to the other after a tax has been assessed and demand made for payment thereof."

In the case at bar, the cashiers' checks were given to petitioner from April 15, 1948 to September 18, 1950.

The Commissioner did not assert a claim for additional tax against the husband until 1952.

V.

The decision below is in conflict with the decision of the Eighth Circuit in *Knop* v. *United States* (1956), 234 Fed. (2d) 760, 49 AFTR 1497, which holds that a liability for tax allegedly due for a previous year may not be offset against an overpayment for a later year unless the taxpayer is given the opportunity of contesting the alleged deficiency in the Tax Court.

VI.

The decision below is in conflict with the decision of the Ninth Circuit in *Granquist* v. *Hackleman* (1959) 264 F. (2d) 9, 3 AFTR (2d) 729, which held that under the 1954 Code delinquency penalties could not be collected in the absence of a notice of deficiency. The *Hackleman* case quotes from the Committee reports showing the Congressional intent of giving all taxpayers the right to a day in Court before being compelled to pay.

CONCLUSION

The petitioner has been subjected to litigation extending over a period of many years. She has won in both Tax Court cases, and it has been finally determined that she overpaid her tax for 1945 and 1946. In spite of this, the Court of Claims has held, contrary to specific statute and case law, that the amount of the overpayments determined by the Tax Court may be applied, without notice to her, and without giving her the opportunity to contest the matter; as a credit against her husband's tax liability for 1945.

This procedure so completely violates established law and procedure that the writ should be granted.

Respectfully submitted,

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